APPEAL NO. 161338
FILED SEPTEMBER 14, 2016

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 2, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to a chemical burn to the buttocks or small fiber neuropathy; (2) the appellant/cross-respondent (claimant) reached maximum medical improvement (MMI) on September 22, 2015; (3) the claimant has no permanent impairment resulting from the compensable injury; and (4) the claimant had disability beginning on August 25, 2015, and continuing through March 31, 2016, but he had no disability from April 1, 2016, through the date of the CCH.

The claimant appealed the hearing officer's determinations of the extent of the compensable injury, MMI, and impairment rating (IR). The claimant argued that it was error for the hearing officer to require expert evidence to prove the claimant sustained a chemical burn to the buttocks. The respondent/cross-appellant (carrier) responded, urging affirmance of the determinations disputed by the claimant.

The carrier cross-appealed, disputing the hearing officer's disability determination. The carrier argued that the claimant did not meet his burden of proof to show he sustained disability for the compensable injury. The appeal file does not contain a response from the claimant to the carrier's cross-appeal.

DECISION

Affirmed in part as reformed and reversed and remanded in part.

The parties stipulated, in part, that the carrier has accepted a compensable injury sustained on (date of injury), in the nature of a rash to the buttocks. The claimant testified that he went to the men's room and put bathroom tissue on the seat. The claimant testified that he felt a burning sensation on his buttocks and legs after sitting down on the tissue.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of (date of injury), does not extend to a chemical burn to the buttocks or small fiber neuropathy is supported by sufficient evidence and is affirmed.

DISABILITY

The hearing officer's determination that the claimant does have disability resulting from the compensable injury from August 25, 2015, through March 31, 2016, but he had no disability from April 1, 2016, to the CCH is supported by sufficient evidence and is affirmed. The fact that another fact finder may have drawn different inferences from the evidence which would have supported a different result does not provide a basis for us to disturb the challenged determination. *Salazar v. Hill*, 551 S.W.2d 518 (Tex.Civ.App.-Corpus Christi 1977, writ ref'd n.r.e.). We note Conclusion of Law No. 6 contains an incorrect date. Conclusion of Law No. 6 states as follows: [the] [c]laimant had disability beginning on August 25, 2015, and continuing through March 31, 2015, but he had no disability from April 1, 2016, to the [CCH]. We reform Conclusion of Law No. 6 to reflect the correct date as follows: [the] [c]laimant had disability beginning on August 25, 2015, and continuing through March 31, 2016, but he had no disability from April 1, 2016, to the [CCH].

MMI/IR

Section 401.011(30)(A) defines MMI as "the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated." Section 408.1225(c) provides that the report of the designated doctor has presumptive weight, and the Texas Department of Insurance, Division of Workers' Compensation (Division) shall base its determination of whether the employee has reached MMI on the report of the designated doctor unless the preponderance of the other medical evidence is to the contrary.

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides that the assignment of an IR for the current compensable injury shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination.

The parties stipulated that the Division appointed (Dr. T) as the designated doctor to address issues of MMI, IR, and disability. Dr. T examined the claimant on January 25, 2016, and certified that the claimant had not yet reached MMI. Dr. T noted that on January 20, 2016, the claimant was diagnosed with small fiber neuropathy, most likely chemical induced and an EMG needed to be performed to rule out large fiber neuropathy and possibly perform a skin biopsy. As noted above the hearing officer's

determination that the compensable injury does not extend to small fiber neuropathy is affirmed. The hearing officer found that the preponderance of the other medical evidence was contrary to Dr. T's certification that the claimant had not reached MMI. That finding is supported by sufficient evidence.

There were three other certifications in evidence. (Dr. M) the claimant's treating doctor examined the claimant on September 22, 2015, and certified the claimant reached MMI on that date with no permanent impairment. Dr. M diagnosed the claimant with a rash and noted that on exam the skin is well healed. The evidence does not contain a Report of Medical Evaluation (DWC-69) signed by Dr. M. Rule 130.1(d)(1) provides that a certification of MMI and assignment of an IR for the compensable injury requires the completion, signing, and submission of the DWC-69 and a narrative report. *See* Appeals Panel Decision (APD) 142708, decided February 23, 2015; APD 100510, decided June 24, 2010; APD 101734, decided January 27, 2011, and APD 141332, decided August 11, 2014. Because the DWC-69 was not signed by Dr. M, it was error for the hearing officer to adopt her certification. Consequently, we reverse the hearing officer's determinations that the claimant's MMI date is September 22, 2015, and the claimant has no permanent impairment.

(Dr. J), a carrier-selected required medical examination doctor, examined the claimant on April 19, 2016, and certified the claimant reached MMI on September 22, 2015, with a zero percent impairment using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). Dr. J gave as an impression chemical burns to the buttocks, resolved. As previously noted the hearing officer's determination that the compensable injury of (date of injury), does not extend to chemical burn to the buttocks has been affirmed. Accordingly, Dr. J's certification of MMI/IR cannot be adopted.

(Dr. P), a doctor selected by the treating doctor to act in his place, examined the claimant on January 6, 2016, and certified that the claimant reached MMI on December 30, 2015, with a zero percent IR using the AMA Guides. In his accompanying narrative report, Dr. P stated concerning the chemical burn of the buttocks, the compensable injury, the claimant receives a zero percent whole person IR. As previously noted the hearing officer's determination that the compensable injury of (date of injury), does not extend to chemical burn to the buttocks has been affirmed. Accordingly, Dr. P's certification of MMI/IR cannot be adopted.

There is no other certification in evidence. Consequently, the issues of MMI and IR are remanded to the hearing officer for further action consistent with this decision.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of (date of injury), does not extend to a chemical burn to the buttocks or small fiber neuropathy.

We reform Conclusion of Law No. 6 to reflect the correct date as follows: [the] [c]laimant had disability beginning on August 25, 2015, and continuing through March 31, 2016, but he had no disability from April 1, 2016, to the [CCH].

We affirm the hearing officer's determination that the claimant does have disability resulting from the compensable injury from August 25, 2015, through March 31, 2016, but he had no disability from April 1, 2016, to the CCH.

We reverse the hearing officer's determinations that the claimant's MMI date is September 22, 2015, and the claimant has no permanent impairment and remand the issues of MMI and IR to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

Dr. T is the designated doctor in this case. On remand, the hearing officer is to determine whether Dr. T is still qualified and available to be the designated doctor. If Dr. T is no longer qualified or available to serve as the designated doctor, then another designated doctor is to be appointed to determine the claimant's MMI and IR for the (date of injury), compensable injury.

The hearing officer is to advise the designated doctor that the compensable injury extends to a rash to the buttocks. The hearing officer is also to notify the designated doctor that the compensable injury does not extend to a chemical burn to the buttocks or small fiber neuropathy.

The certification of MMI should be the earliest date after which, based on reasonable medical probability, further material recovery from or lasting improvement to an injury can no longer reasonably be anticipated considering the physical examination and the claimant's medical records.

The assignment of an IR is required to be based on the claimant's condition as of the MMI date considering the medical records and the certifying examination and according to the rating criteria of the AMA Guides and the provisions of Rule 130.1(c)(3). After a new certification of MMI/IR is submitted, the parties are to be provided with the designated doctor's DWC-69 and narrative report. The parties are to be allowed an opportunity to respond. The hearing officer is to determine the issues of MMI and IR consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* APD 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201.

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge